150 U.S. 47

150 U.S. 47

RECORD, CASE No. 13,855.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., ~~245~~. 36

JOHN H. GORDON; MARY A. GORDON, AS EXECUTRIX OF JAMES F. GORDON, DECEASED; AND ELIZA W. OSBORNE, FREDERICK HARRIS, AND THOMAS M. OSBORNE, EXECUTORS OF DAVID M. OSBORNE, DECEASED, APPELLANTS,

vs.

THE CHAMPION MACHINE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED OCTOBER 21, 1889.

156 By the Hon. George R. Sage, district judge of the United States, S. D. O., sitting and holding circuit court of the United States for the southern district of Ohio, to Abel Hoover and William Gamble:

Whereas John H. Gordon, Mary A. Gordon, as executrix of James F. Gordon, deceased; Eliza W. Osborne, Frederick Harris and Thomas M. Osborne, as executors of David M. Osborne, deceased, have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of Ohio made in favor of you, the said Abel Hoover and William Gamble, and have filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October, 1889, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Cincinnati, in the southern district of Ohio, in the sixth circuit, on the 6th day of July, in the year of our Lord one thousand eight hundred and eighty-nine.

GEO. R. SAGE,

District Judge of the United States, S. D. O., Sitting & Holding Circuit Court, there Being No Associate Justice or Circuit Judge in the District.

157 [Endorsed:] 7, 6, '89. United States circuit ct., southern district of Ohio. In equity. John H. Gordon & o'rs against Abel Hoover & ano. 3698. Citation on appeal to the Supreme Court of the United States. Esek Cowen, counsel for complainants & appellants, 25 North Pearl street, Albany, N. Y. Filed Jul. 27, 1889. B. R. Cowen.

Received this writ at Cincinnati, Ohio, on the 6th day of July, 1889, and at Miamisburg, Ohio, on the 16th day of July, 1889, I served the within-named Abel Hoover & William Gamble personally with a true copy of this writ, having all the endorsements thereon.

J. H. SIMMONS, *U. S. Marshal*,
By CHAS. A. COSTELLO, *Deputy*.

2 services	4 00
2 copies	1 00
52 miles	3 12
	88 12

Endorsed on cover: Case No. 13,854. S. Ohio C. C. U. S. No. 244. John H. Gordon, Mary A. Gordon, as executrix of James F. Gordon, deceased, and Eliza W. Osborne, Frederick Harris, and Thomas M. Osborne, executors of David M. Osborne, deceased, appellants, *vs.* Abel Hoover and William Gamble. Filed October 21, 1889.

150 U.S. 47

150 U.S. 47

RECORD, CASE No. 13,855.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., ~~25~~. 36

JOHN H. GORDON; MARY A. GORDON, AS EXECUTRIX OF JAMES F. GORDON, DECEASED; AND ELIZA W. OSBORNE, FREDERICK HARRIS, AND THOMAS M. OSBORNE, EXECUTORS OF DAVID M. OSBORNE, DECEASED, APPELLANTS,

vs.

THE CHAMPION MACHINE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED OCTOBER 21, 1889.

RECORD, CASE No. 13,855.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 245.

JOHN H. GORDON; MARY A. GORDON, EXECUTRIX OF JAMES F. GORDON, DECEASED; AND ELIZA W. OSBORNE, FREDERICK HARRIS, AND THOMAS M. OSBORNE, EXECUTORS OF DAVID M. OSBORNE, DECEASED, APPELLANTS,

vs.

THE CHAMPION MACHINE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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1 THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, Western Division, }

At a stated term of the circuit court of the United States of America within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms, at the city of Cincinnati, Ohio, in said district, on the first Tuesday of April, being also the second day of that month, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the United States of America the one hundred and thirteenth—present, the Honorable George R. Sage, district judge—among the proceedings had were the following, to wit:

JAMES A. GORDON & Others, Complainants,
against
THE CHAMPION MACHINE Co., Defendants. } In Chancery. # 3695.

Be it remembered that heretofore, to wit, on the seventh day of November, in the year of our Lord one thousand eight hundred and eighty-four, came the complainants, by their solicitors, Stem & Peck, and filed in the clerk's office of said court their certain bill in chancery, said bill being clothed in the words and figures following, to wit:

2 United States Circuit Court, District of ——. In Equity.

To the judges of the circuit court of the United States for the southern district of Ohio:

James F. Gordon and John H. Gordon, of Rochester, N. Y., and David M. Osborne, of Auburn, N. Y., each of whom is a citizen of the State of New York, bring this their bill against The Champion Machine Co., of Springfield, Ohio, a corporation organized and existing under and by virtue of the laws of the State of Ohio, and having its principal place of business at Springfield, Ohio.

3 And thereupon your orators complain and say that prior to the 12th day of May, 1868, your orator, the said James F. Gordon, became and was the first and original inventor of certain new and useful improvements in grain-binders not known or used before his invention thereof and which were not at the time of his application for a patent therefor in public use or on sale with his consent and allowance; and your orators further show unto your honors that the said James F. Gordon, so being the inventor of the said improvements in grain-binders, made application to the proper department of the Government of the United States for letters patent, in accordance with the then existing acts of Congress, and duly complied in all respects with all the conditions and requirements of

said acts of Congress, and that on the said 12th day of May, 1868, letters patent of the United States, numbered 77878, signed, sealed, and executed in due form of law, for the said invention or discovery were issued to the said James F. Gordon, whereby there was secured to him, his heirs, executors, administrators, and assigns, for the term of seventeen years from the said 12th day of May, 1868, the full and exclusive right of making, using, and vending the said improvement in grain-binders therein specified and claimed throughout the United States and the territories thereof, as in and by said letters patent or a certified copy thereof in court to be produced, will more fully and at large appear.

And your orators further show unto your honors that prior to the sixteenth day of June, 1874, your orator, the said James F. Gordon, became and was the first and original inventor of certain
4 other new and useful "improvements in grain-binders" not known or used before his invention thereof and which were not at the time of his application for a patent therefor in public use or on sale with his consent or allowance; and your orators further show unto your honors that the said James F. Gordon, so being the inventor of the said last-mentioned improvements in grain-binders, made application to the proper department of the Government of the United States for letters patent in accordance with the then existing acts of Congress, and duly complied in all respects with all the conditions and requirements of said acts of Congress, and that on the said sixteenth day of June, 1874, letters patent of the United States, numbered 151,967, signed, sealed, and executed in due form of law, for the said last above-mentioned invention or discovery were issued to the said James F. Gordon, whereby there was secured to him, his heirs, executors, administrators, and assigns, for the term of seventeen years from the said sixteenth day of June, 1874, the full and exclusive right of making, using, and vending the said improvements in grain-binders therein specified and claimed throughout the United States and the territories thereof as in and by the said letters patent or a certified copy thereof, in court to be produced, will more fully and at large appear.

And your orators further show unto your honors that prior to the twenty-sixth day of October, 1875, your orator, the said James F. Gordon, became and was the first and original inventor of certain other new and useful improvements in grain-binders not known or used before his invention thereof and which were not at the
5 time of his application for a patent therefor in public use or on sale with his consent or allowance; and your orators further show unto your honors that the said James F. Gordon, so being the inventor of the said last-mentioned improvements in grain-binders, made application to the proper department of the Government of the United States for letters patent in accordance with the then existing acts of Congress and duly complied in all respects with all the conditions and requirements of said acts of Congress, and that on the said twenty-sixth day of October, 1875, letters patent of the United States, numbered 169,258, signed, sealed, and executed in due form of law, for the said last above-mentioned in-

vention or discovery were issued to the said James F. Gordon, whereby there was secured to him, his heirs, executors, administrators, or assigns, for the term of seventeen years from the said twenty-sixth day of October, 1875, the full and exclusive right of making, using, and vending the said improvements in grain-binders therein specified and claimed throughout the United States and the territories thereof, as in and by said letters patent or a certified copy thereof, in court to be produced, will more fully and at large appear.

6 And your orators further show unto your honors that prior to the commencement of this suit, for valuable consideration, certain assignments of certain interests or rights in and to the said letters patent and each of the same were duly made, executed, and recorded in the Patent Office of the United States, whereby, prior to the infringement hereinafter complained of, the entire right, title, and interest in and to the said inventions or discoveries secured by the said letters patent Nos. 77878, 151,967, and 169,258 and each of the same for the entire territory of the United States, except the State of Michigan, was conveyed to and became vested in your orators, who are now the sole owners of the said letters patent and each of the same for the said southern district of Ohio and in and for the entire territory of the United States, excepting only the State of Michigan, and of all rights of action or recovery for profits or damages arising from infringement of the said letters patent or either of the same, as in and by said assignments or certified copies thereof, here in court to be produced, will more fully appear.

And your orators further show unto your honors that the said improvements in grain-binders are of very great utility, and that they have been extensively applied by your orators to practical use, and that the public have generally acquiesced in your orators' exclusive right to the same, and that your orators have been and but for the infringement hereinafter complained of would still be in the undisturbed use, possession, and enjoyment of the exclusive privileges secured by the said letters patent and each of the same and in receipt of the profits therefrom.

7 And your orators further show unto your honors on information and belief that since the date of the said assignments and up to the time of the commencement of this action the said defendants, well knowing all the facts hereinbefore set forth and against the will of your orators and in violation of your orators' exclusive rights, unlawfully, wrongfully, and injuriously and with intent to deprive profits from making and selling said machines and to deprive your orators of the royalties which they might and otherwise would have derived from the said exclusive rights, at Springfield, in said southern district of Ohio, and elsewhere in the United States, did make, use, and sell and did cause to be made, used, and sold grain-binding machines containing and embodying the said inventions or improvements or substantial and material parts thereof described and claimed in the said several letters patent and each of the same, whereby the said defendants has infringed and is now

infringing the said letters patent and each of the same, but how many — said machines the defendant so made, used, or sold or caused to be made used or sold your orators are ignorant and cannot set forth and pray discovery thereof; but your orators aver on information and belief that the said defendant has made and sold or caused to be made and sold a large number thereof, and that it has derived and *are* now deriving large profits therefrom, but to what amount your orators are ignorant and cannot set forth, but your orators believe the amount to be about the full sum of one hundred thousand dollars and so charge the fact to be, and that your orators have been deprived of large royalties by reason of the aforesaid infringement of the said defendant and have thus incurred large damages thereby.

8 And your orators further show unto your honors that the said improvements described and claimed in the said several letters patent, Nos. 77878, 151,967, and 169,258, are so nearly allied in character as to be capable of conjoint as well as separate use in grain-binding machines, and that the said inventions, or substantial and material parts of the said inventions, described and secured in and by each of the said several letters patent have been and are in fact used conjointly by the said defendants in the grain-binders manufactured and sold by *them*, and the said defendant has been and now is making, using, and vending in said southern district of Ohio and elsewhere in the United States large numbers of grain-binders, each of which contains, in one and the same machines, the inventions and improvements, or substantial and material parts thereof, described and secured in and by each of the said several letters patent.

And your orators further show that they fear and have reason to fear that unless the said defendant is restrained by a writ of injunction issuing out of this court it will continue to make and sell the said grain-binding machines in infringement of the said letters patent and each of the same and in violation of your orators' exclusive rights thereunder, and that *they* will thereby cause irreparable injury to your orators' aforesaid exclusive rights.

9 And your orators further show unto your honors that the said defendant has had notice of the said infringement and has been requested to refrain and desist therefrom, but has refused so to do, and still continues to make, use, and vend grain-binding machines each containing the inventions and improvements secured by said several letters patent.

Forasmuch as your orators can have no adequate relief, except in this court, and as such proceedings are contrary to equity, to the end, therefore, that the defendant may show, if it can, why your orators should not have the relief hereby prayed, and may upon the*ir* corporal oaths of its president or other proper officer, to the best and utmost of their knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the premises and the matters and things hereinbefore stated and charged as fully and particularly as if severally and separately interrogated

as to each and every of said matters and as if the same were hereinafter repeated.

And your orators therefore pray that the said defendant may be compelled by a decree of this court to account for and pay over to your orators all such gains and profits as have accrued or arisen to or been earned or received by said defendant from the unlawful use of the said inventions described in and secured by said several letters patent and from infringement thereof, as aforesaid, and, in addition, to pay the damages sustained by your orators from such infringement.

10 And your orators further pray that the said defendant and its officers, servants, agents, attorneys, and workmen, and each and every of them, may be perpetually enjoined and restrained by an injunction issuing out of and under the seal of this honorable court from directly or indirectly making, using, or vending the said improvements or inventions described and claimed in said three several letters patent, No. 77878, No. 151,067, and No. 169,258, or in either of them or any part thereof, or any grain-binding machines made in accordance therewith; that each of said several letters patent may be decreed to be valid and your orators to be the lawful owners of the same and each of them, and that the manufacture, use, and sale of said grain-binding machines by the said defendant is an infringement thereof, and that the said defendant may be decreed to pay the costs of this suit, and that your orators may have such other and further relief as to this honorable court shall seem meet and as shall be agreeable to equity.

And your orators further pray that a preliminary or provisional injunction may be issued out of and under the seal of this honorable court enjoining and restraining the said defendants, its officers, servants, attorneys, agents, and workmen, and each and every of them, from further infringement of said letters patent or either of them during the pendency of this suit.

May it please your honors to grant unto your orators not only writs of injunction conformable to the prayers of this bill, but

11 also the writ of *subpœna ad respondendum*, issuing out of and under the seal of this honorable court, directed to the said defendant, The Champion Machine Co., commanding it, at a certain time therein to be named and under a certain penalty therein to be limited, to be and appear before this honorable court, then and there to answer unto this bill of complaint and to perform and abide by such order and decree in the premises as to this honorable court shall seem meet and may be required by the principles of equity and good conscience.

And your orators will ever pray, etc.

JAMES F. GORDON.
JOHN H. GORDON.
DAVID M. OSBORNE.

GEO. B. SELDEN,
Complainants' Counsel.
STEM AND PECK,
Sol'rs for Comp't.

12 UNITED STATES OF AMERICA, }
Northern District of New York, } *ss:*

James F. Gordon, being duly sworn, deposes and says that he is one of the complainants in the foregoing bill named; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he verily believes it to be true; and he further says that he verily believes the said James F. Gordon in said bill named to be the original, true, and first inventor of the improvements in grain-binders described and claimed in the said letters patent Nos. 77878, 151,967, and 169,258, and each of the same, mentioned in said bill of complaint, and, further, that he verily believes that the said complainants above named are the lawful owners of each of the said letters patent.

JAMES F. GORDON.

Subscribed and sworn to before me this 1st day of November, 1884.
[SEAL] Z. L. DAVIS,
Notary Public.

13 And afterwards, to wit, on the same day, to wit, there was issued out of the clerk's office of said court our certain subpœna in chancery, directed to the marshal of the district and against the said defendants herein; said subpœna is clothed in the words and figures following, to wit:

Subpœna in Chancery.

THE UNITED STATES OF AMERICA, }
Southern District of Ohio, } *ss:*

The President of the United States of America to the marshal of the southern district of Ohio, Greeting:

You are hereby commanded to summon The Champion Machine Co., of Springfield, Ohio, a corporation, citizen of and resident of the State of Ohio, if it be found in your district, to be and appear in the circuit court of the United States for the southern district of Ohio aforesaid, at Cincinnati, on the first Monday in January next, to answer a certain bill in chancery filed and exhibited in said court against — by James F. Gordon, John H. Gordon, and David M. Osborne, citizens of and resident in the State of New York.

Hereof you are not to fail, under the penalty of the law thence ensuing.

And have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the United States, this 7th day of November, A. D. 1884, and in the 109th year of the Independence of the United States of America.

Attest:

[SEAL.] WM. C. HOWARD, *Clerk.*

14 *Memorandum.*

The said defendant is required to enter its appearance in this suit in the clerk's office of said court on or before the first Monday of December, 1884; otherwise the said bill may be taken *pro confesso.*

WM. C. HOWARD, *Clerk.*

Endorsed thereon: $25.00 deposited, security for all costs for which the plaintiff- may be liable in this suit.

And afterwards, to wit, on the 12th day of November, A. D. 1884, came the marshal to whom the said subpœna was in form directed and filed in the clerk's office of said court the same, with his proceedings had thereon endorsed, to wit:

Marshal's Return.

Received this writ at Cincinnati, Ohio, on Nov. 7, 1884, and served the same in Springfield, Ohio, by delivering copy hereof to Amos Whitely, pres't, and copy to Bert. J. Whitely, sec'y, of said Champion Co., of Springfield, Ohio.

LOT WRIGHT,
U. S. M., S. D. O.,
By R. F. HAYWOOD, *Deputy.*

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90 miles	5 40
	$10 40

15 And afterwards, to wit, on the 5th day of January, A. D. 1885, the following answer was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Answer.

In the Circuit Court of the United States for the Southern District of Ohio.

JAMES F. GORDON, JOHN H. GORDON, and DAVID M. OSBORNE
vs.
THE CHAMPION MACHINE COMPANY.
} In Equity.

The answer of The Champion Machine Co., the defendant, to the bill of complaint of James F. Gordon, John H. Gordon, and David M. Osborne, complainants, exhibit- against this def't in said court.

This defendant, now and at all times hereafter saving and reserving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in said bill contained, for answer hereto or to so much hereof as this defendant is advised it is material or necessary for it to make answer hereto, answering, says—

That it admits that letters patent of the United States for an alleged improvement in grain-binders, dated the 12th day of
16 May, 1868, and No. 77878, were issued to the complainant James F. Gordon, but whether said letters patent were signed, sealed, or executed in due form of law, or whether due application was made therefor, or whether the said James F. Gordon made application therefor in accordance with the then existing acts of Congress or duly complied in all respects with all the conditions and requirements of the said acts of Congress, as set forth in said bill, this defendant does not know and is not informed, save by said bill, and leaves the complainants to make such proof thereof as they may be advised.

This defendant, further answering, upon information and belief denies that the said complainant, James F. Gordon, was the first and original inventor of said alleged improvements in grain-binders, or that the said improvements were not known or used by others before the alleged invention or discovery thereof by the said complainant, or that the said letters patent secured to the said complainant, James F. Gordon, his heirs, executors, administrators, or assigns, the full, exclusive right of making, using, and vending the said alleged improvements in grain-binders or any part thereof for the term of 17 years in said bill averred or for any time whatsoever.

That it admits that letters patent of the United States for an alleged improvement in grain-binders, dated June 16th, 1874, and No. 151,967, were issued to the complainant James F. Gordon, but whether said letters patent were signed, sealed, or executed in due form of law, or whether due application was made therefor, or whether the said James F. Gordon made application therefor in ac-

cordance with the then existing acts of Congress, or duly complied in all respects with all the conditions and requirements of the said acts of Congress, as set forth in said bill, this defendant
17 does not know and is not informed, save by said bill, and leaves the complainants to make such proof thereof as they may be advised.

This defendant, further answering, upon information and belief denies that the said complainant James F. Gordon, was the first and original inventor of said alleged improvements in grain-binders, or that the said improvements were not known or used by others before the alleged invention or discovery thereof by the said complainant, or that the said letters patent secured to said complainant, James F. Gordon, his heirs, executors, administrators, or assigns, the full and exclusive right of making, using, and vending the said improvements in grain-binders or any part thereof for the term of 17 years in said bill averred or for any time whatsoever.

That it admits that letters patent of the United States for an alleged improvement in grain-binders, dated October 26th, 1875, and No. 169,258, were issued to the complainants James F. Gordon, but whether said letters patent were signed, sealed, or executed in due form of law, or whether due application was made therefor, or whether the said James F. Gordon made application therefor in accordance with the then existing acts of Congress or duly complied in all respects with all the conditions and requirements of said acts of Congress, as set forth in said bill, this defendant does not know and is not informed, save by said bill, and leaves the complainants to make such proof thereof as they may be advised.

This defendant, further answering, upon information and belief denies that the said complainant, James F. Gordon, was the first and original inventor of said alleged improvements in grain-binders, or that the said improvements were not known or used
18 by others before the alleged invention or discovery thereof by the said complainant, or that the said letters patent secured to the complainant James F. Gordon, his heirs, executors, administrators, or assigns, the full and exclusive right of making, using, and vending the said improvements in grain-binders or any part thereof for the term of 17 years in said bill averred or for any time whatsoever.

And this defendant, further answering, says that it does not know and is not informed, save by said bill, and cannot set forth, as to its belief or otherwise, whether or not any assignment of any interest in the aforesaid letters patent was ever made or was ever recorded in the Patent Office of the United States, or whether or not the complainants thereby acquired any interest in the said letters — or in any of them, or in any or all rights of action for profits or damages arising from infringement of said letters patent or of any of them, or whether or not the complainants are the sole owners of the said letters patent or any of them, and leaves the complainants to make such proof thereof as they may be advised.

And this defendant, further answering, denies that the said alleged improvements described and claimed in the said several let-

ters patent Nos. 77878, 151,967, and 169,258 are so nearly allied in character as to be capable of conjoint as well as of separate use in grain-binding machines, or that the said inventions or substantial and material parts of the said inventions described in and secured by each of the several letters patent have been or in fact are used conjointly by this defendant in the grain-binders manu-
19 factured and sold by it, or that this defendant has been or now is making, using, or vending in said southern district of Ohio or elsewhere any grain-binders which contains in one and the same machine the alleged inventions or improvements or substantial and material parts thereof described and secured in and by each of the said several letters patent.

On the contrary, this defendant says upon information and belief that it does not require all of the alleged inventions described in and by each of said letters patent to constitute a complete grain-binding machine, and that the said alleged inventions described and claimed in and by each of said letters patent cannot be used upon one and the same machine, and the complainants are not entitled to unite claims for infringement of each of said letters patent in the same suit against this defendant, and this defendant prays the same advantage of this objection as if it had pleaded the same to the complainants' said bill of complaint.

And this defendant, further answering, denies that the said alleged improvements in grain-binders are of very great utility, or that they have been extensively applied by the complainants to practical use, or that the public have *acquired* in the complainants' exclusive right to the same, or that the said alleged inventions are of any use or value to the complainants or to the public, but, upon the contrary, this defendant upon information and belief says that the said alleged improvements in grain-binders never were perfected or adopted to use by the complainants, but were abandoned by them, and were not reduced by them to working capability or practical use.

And this defendant, further answering, denies that it has
20 made, sold, or used or is making, selling, or using any grain-binding machine containing or embodying any of the alleged inventions or improvements or any substantial and material part thereof which are described and claimed in and by the aforesaid mentioned letters patent set forth in said bill or in and by any of them.

And this defendant, further answering, upon information and belief denies that the complainant James F. Gordon was the original or first inventor of said alleged improvements in grain-binding machines described and claimed by said several letters patent or in and by any of them in said bill mentioned or of any material or substantial part of said alleged improvements in grain-binding machines or any of them.

But, on the contrary, this defendant upon information and belief avers and will maintain that long prior to the alleged or to any invention of said improvements in grain-binders by the said complainant, James F. Gordon, the same had been patented and described

in letters patent of the United States granted to the following persons on the dates following respectively and bearing the date upon which they were respectively granted, viz:

No. 8083 to Watson, Renwick & Watson, dated May 13, 1851.
No. 9930 to Watson & Renwick, dated Dec. 6, 1853.
No. 50815 to A. Goodyear, dated Nov. 7, 1855.
No. 21540 to Allen Sherwood, dated Sept. 14, 1858.
No. 31402 to Stephen S. Reynolds, dated Feb. 12, 1861.
No. 37408 to Theodore Palmer, dated Jan'y 13, 1863.
No. 56380 to S. D. Locke, dated July 24, 1866.
No. 75215 to A. S. Stone, dated March 3, 1868.
21 No. 84693 to Hayes, Wald & Main, dated Dec. 8, 1868.
No. 88087 to G. B. Shafer, dated March 3d, 1869.
No. 97531 to S. D. Locke, dated Dec. 7, 1869.
No. 103,861 to T. Fowler, dated June 7, 1870.
No. 110,138 to A. S. Hoyt, dated Dec. 13, 1870.
No. 124,020 to Wm. Siverd, Jr., dated Feb. 27, 1872.
No. 149,233 to S. D. Locke, dated March 31, 1874.
No. 150,992 to C. B. Withington, dated May 19, 1874.
No. 151,105 to H. A. Dietzel, dated May 19, 1874.
No. 159,506 to M. L. Gorham, dated Feb. 9, 1875.

21½ And the defendant, further answering, upon information and belief says that the combination of the grain-binding machine made and sold by this defendant and the organization and adoption of the several parts thereof to the work of binding grain employed in the machine made and sold by this defendant has been the subject of several letters patent of the United States, under and by virtue of the authority of which this defendant has been and is engaged in making all the grain-binding machines made and sold by it as follows, viz:

No. 90807 to J. F. Appleby, dated June 1, 1869.
No. 93165 to J. Bebee, dated Aug. 3, 1869.
No. 110,498 to F. W. Randall, dated Dec. 27, 1870.
No. 120,828 to M. F. Ridout, dated Nov. 14, 1871.
No. 140,083 to L. A. Scott, dated June 17, 1873.
No. 141,507 to A. S. Hoyt, dated Aug. 5, 1873.
No. 155,528 to W. Lentz & R. Witke, dated Sept. 29, 1874.
No. 159,506 to M. L. Gorham, dated Feb. 9, 1875.
No. 169,743 to A. W. Tucher, dated Nov. 9, 1875.
No. 171,465 to J. F. Appleby, dated Dec. 28, 1875.
No. 171,652 to C. G. Crosse, dated January 4, 1876.
No. 176,550 to J. R. Prescott, dated April 25, 1876.
No. 179,050 to Randall & Rayment, dated June 20, 1876.
No. 188,032 to L. A. Scoville, dated March 6, 1877.
No. 188,125 to Geo. F. Greene, dated March 6, 1877.
No. 191,776 to W. H. Payne, dated June 12, 1877.
No. 208,137 to J. F. Appleby, dated Sept. 17, 1878.
22 No. 212,420 to J. A. Appleby, dated Feb. 18, 1878.
No. 213,838 to F. W. Randall, dated April 1, 1879.

No. 214,790 to W. H. Payne, dated April 29, 1879.
No. 219,304 to " " dated Sept. 2, 1879.
No. 233,089 to M. L. Gorham, dated Oct. 12, 1880.
No. 231,448 to F. W. Randall, dated Aug. 24, 1880.
No. 234,372 to W. H. Payne, dated Nov. 9, 1880.
No. 241,457 to C. L. Travis, dated May 10, 1881.
No. 252,988 to J. F. Appleby, dated Jan'y 31, 1882.
No. 255,569 to Wm. Bayley, dated May 28, 1882.
No. 255,741 to Whitely, Baylee & Hurd, dated May 28, 1882.
No. 255,941 to J. H. Dean, dated April 4, 1882.
No. 256,188 to J. F. Appleby, dated April 11, 1882.
No. 257,837 to J. F. Appleby, dated May 16, 1882.
No. 258,180 to Wm. N. Whiteley, dated May 16, 1882.
No. 260,087 to J. H. Dean, dated June 27, 1882.
No. 260,634 to J. F. Appleby, dated July 4, 1882.
No. 261,072 to J. F. Appleby, dated July 4, 1882.
23 No. 262,883 to J. F. Appleyby, dated Aug. 15, 1882.
No. 264,602 " " " Sept. 19, "
No. 265,199 to Whitely & Thomas, Sept. 26, "
No. 265,215 to Wm. Bayley, " " "
No. 266,087 to R. Brown, Oct. 17, "
No. 266,426 to " Oct. 24, "
No. 266,937 to Whitely & Bayley, Oct. 31, "
No. 266,949 to Bullock & Appleby, " "
No. 267,934 to T. M. Rice, Nov. 21, "
No. 267,935 to " " "
No. 267,936 to " " "
No. 273,811 to W. W. Burson, March 13, 1883.
No. 273,812 to W. W. Burson, dated March 13, 1883.
No. 274,077 to Whitely, Bayley & Lee, dated M'ch 13, 1883.
No. 274,870 to Whitely & Bayley, " M'ch 27, "
No. 275,114 to J. F. Appleby, " April 3, "
No. 276,519 to " " April 24, "
No. 283,445 to Whitely, Bayley & Lee, " Aug. 21, "
No. 290,658 to J. F. Appleby, " Dec. 25, 1884.
No. 297,144 to " " Apr. 22, "
No. 305,038 to " " Sept. 16, "
No. 305,039 to " " Sept. 16, "
No. 306,448 to Whiteley & Bayley, " Oct. 14, "

And the defendant, further answering, says that if the complainants' patent is entitled to receive a construction which would
24 include the grain-binding apparatus upon the machines sold by this defendant, then the said patents, as this defendant is informed and believes, are null and void.

And this defendant, further answering, says that it is not now making, using, or selling, nor has it at any time ever made or sold any grain-binding machine containing or employing any of the improvements claimed in the complainants' patents.

And this defendant, further answering, denies that said complainant- *is* entitled to the relief or any part thereof in *his* said bill of complaint demanded, and says there is no equity in said bill, and

that the matters hereof are properly cognizable in a court of equity; and this defendant prays the same advantage for this answer as if he had pleaded or demurred to said bill of complaint;

Without this, that there is any other matter, c-use, or thing in said complainants' said bill of complaint contained material or or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

THE CHAMPION MACHINE CO.,
By AMOS WHITELY, *Pres't.*

BOWMAN AND BOWMAN, *Sol'rs of Def'ts.*
S. A. BOWMAN, *Of Counsel.*

25 THE UNITED STATES OF AMERICA, }
Southern District of Ohio. }

Amos Whitely, being duly sworn, says that he is the president of the defendant named in the foregoing answer; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge except as to matters -herein stated *in* information and belief, and as to those matters he verily believes it to be true.

FRANK B. FURNISS,
[SEAL.] *Notary Public, Clark Co., O.*

And afterwards, to wit, on the 17th day of Feb., A. D. 1885, the following replication was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Replication.

Circuit Court of the U. S. for the Southern Dist. of Ohio, W. D.

JAMES F. GORDON, JOHN H. GORDON, and DAVID M. OSBORNE
vs.
THE CHAMPION MACHINE CO. } No. —. In Equity.

26 The replication of the above-named complainants to the answer of the above-named defendants.

These repliants, saving and reserving to themselves now and at all times hereafter all and all manner of benefit *of* advantage of exception which may be had or taken to the manifold insuffi-encies of said answer, for replication thereunto say that they will aver, maintain, and prove their bill of complaint to be true, certain, and suf-

ficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

STEM & PECK,
Solicitors for Complainant-.

And afterwards, to wit, on the 13th day of December, A. D. 1886, the following bill of revivor was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Bill of Revivor.

27 United States Circuit Court, Southern District of Ohio.

JAMES F. GORDON, JOHN H. GORDON, and DAVID M. OSBORNE
against
THE CHAMPION MACHINE CO. } In Equity.

To the honorable the judges of the United States circuit court for the southern district of Ohio, in chancery sitting:

John H. Gordon, of Rochester, in the State of New York, and a citizen of the State of New York; Mary A. Gordon, of Rochester, in the State of New York, and a citizen of the State of New York; Eliza W. Osborne, of Auburn, in State of N. Y., & a citizen of said State of New York; Frederick Harris, of Springfield, in the State of Massachusetts, and a citizen of the State of Massachusetts, and Thomas M. Osborne, of Auburn, in the State of New York, and a citizen of the State of New York, bring this their bill of revivor against The Champion Machine Co., a corporation organized under the laws of the State of Ohio and doing business at Springfield, in the
28 State of Ohio, and a citizen of the State of Ohio; and thereupon your orators complain and say that heretofore said John H. Gordon and James F. Gordon, late of Rochester, in the State of New York, and a citizen of the State of New York, but now deceased, and David M. Osborne, late of Auburn, in the State of New York, and a citizen of said State, but now deceased, on or about the 7th day of November, 1884, exhibited their bill of complaint in this honorable court against the defendants as defendants thereto, alleging that said defendants had infringed certain letters patent of the United States lawfully owned by the said complainants and had made and secured large gains and profits thereby which of right belonged to said complainants, and had also inflicted great damage upon the complainants,

which complainants ought of right to have and recover from said defendants, and praying for the issuance of process upon said bill, and that defendants answer the allegations thereof; that the defendants be decreed to account for and pay over all such profits and pay all such damages and be perpetually restrained by the decree and injunction of this court from infringing said letters patent, as by said bill, reference being thereto had, will more fully and at large appear.

And the complainants further show unto your honors that said defendants, having been duly served with process in said cause, appeared and put in their answer to said bill, to which the said complainants put their replication; and, said cause being thus at issue upon bill and answer, depositions having been taken by both parties in said cause, that the taking of the testimony is not wholly completed therein and no final hearing in said cause has been had; that afterwards said David M. Osborne died, leaving a last will and testament, which, upon due proceedings therefor had, was duly proved and admitted to probate in the surrogate's court of Cayuga county, in the State of New York on the 16th day of July, 1886, and therein and thereby letters testamentary, with said will
29 annexed, as provided by said will, duly issued to said Eliza W. Osborne, Frederick Harris, and Thomas M. Osborne, who duly qualified as executors of said David M. Osborne and thereby became and are duly qualified legal representatives of said David M. Osborne; that said suit and proceedings having become abated by the death of said David M. Osborne, your orators, said executors, are, as they are advised, entitled, as the personal representatives of said David M. Osborne, to have the said suit and proceedings revived against the said defendants and to have the said cause in the same state and condition as the same was previously to the death of said David M. Osborne.

That after the taking of said depositions said James F. Gordon departed this life, leaving a last will and testament appointing Mary A. Gordon his executrix, which will was, on the proceedings therefor duly had, duly proved and admitted to probate on the 16th day of September, 1886, in the surrogate's court for Monroe county, in the State of New York, and letters testamentary, with the will annexed, thereupon issued to said Mary A. Gordon, who duly qualified as such executrix and thereby became and now is the legal representative of said James F. Gordon.

That said suit and proceedings have become abated by the death of James F. Gordon.

And your orators further show unto your honors that the said Eliza W. Osborne, Frederick Harris, and Thomas M. Osborne are, as the legal representatives of said David M. Osborne, fully entitled to have and recover all that said David M. Osborne was entitled to have and recover by said bill in his lifetime, and said Mary A. Gordon, as the legal representative, is entitled to recover all that said James F. Gordon was entitled to recover during his lifetime by said bill.

Forasmuch, therefore, as your orators are without remedy except in a court of equity, and to the end that said defendants who are made parties to this bill may be required to make full, true,
30 and direct answer to the same, but not under oath, the answer under oath being hereby waived, that the said suit may stand revived and be in the same plight and condition as the same was at the deaths of said David M. Osborne and said James F. Gordon, and that your orators may have such further and other relief in the premises as equity may require and to your honors shall seem meet—

May it please your honors to grant unto the complainants a writ of subpœna to revive, issuing out of and under the seal of this honorable court, to be directed to said The Champion Machine Co., hereby commanding them, at a certain day and under a certain penalty to be therein inserted, personally to be and appear before your honors, in this honorable court, then and there to answer and show cause, if any they can, why the said suit and the proceedings therein had should not stand and be revived against them and be in the same plight and condition as the same were in at the time of the abatement thereof, and, further, to stand to and abide such order and decree in the premises as to your honors shall seem meet; and your orators will ever pray, etc.

JOHN H. GORDON.
MARY A. GORDON.
ELIZA W. OSBORN.
FREDERICK HARRIS.
THOS. M. OSBORNE.

STEM & PECK,
Complainants' Solicitors.
ESEK COWEN,
Of Counsel.

UNITED STATES OF AMERICA, }
Northern District of New York, } *ss:*

Thomas M. Osborne, being duly sworn, says that he is one of the complainants named in the foregoing bill of revivor and makes this verification in behalf of himself and his co-complainants;
31 that he has read the said bill and knows the contents thereof, and that the same is true of his own knowledge except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

THOMAS M. OSBORNE.

Subscribed and sworn to before me this 16th day of November, 1886.

[SEAL.]

J. FRANK DAVIS,
Notary Public, Cayuga Co., N. Y.

32 And afterwards, to wit, on the 23rd day of Dec., A. D. 1886, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal W, p. 580.

In equity.

Upon reading and filing the bill of revivor, filed in the cause of James F. Gordon, John H. Gordon, and David M. Osborne against the above-named defendants by the above-named complainants, and the subpœna issued thereon, and the same having been duly served, and the solicitors of said defendants consenting thereto by stipulation on file herein, it is, upon consideration—

Ordered that said cause of John H. Gordon, James F. Gordon, and David M. Osborne be revived and stand entitled John H. Gordon, Mary A. Gordon (as executrix of James H. Gordon, deceased), and Eliza W. Osborne, Frederick Harris, and Thomas M. Osborne (as executors of David M. Osborne, deceased) *vs.* the defendants above named, and that Mary A. Gordon shall be held and considered to hold and represent all the interest of said James F. Gordon in the original suit as executrix, and that Eliza W. Osborne, Frederick Harris, and Thomas M. Osborne be held and considered to hold and represent all the interest of the said David M. Osborne in said original suit as executors, and that all the testimony herein heretofore taken or stipulated to be used in said original cause may be read and used in this cause as revived as though taken therein, and all stipulations made in said original cause shall be binding in this cause as though made therein.

33 And afterwards, to wit, on the 15th day of January, A. D. 1889, the following appearance was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Appearance.

United States Circuit Court, Southern District of Ohio.

JAMES F. GORDON *et al.*
vs.
WHITELY, FASSLER & KELLY. } In Equity. No. 3696.

SAME
vs.
CHAMPION MACHINE CO. } In Equity. No. 3695.

CLERK: Please enter our appearance as solicitors and counsel for defendants in the above-entitled cases, as per agreement herewith filed.

Respectfully, PARKINSON & PARKINSON,
By ROB'T H. PARKINSON.

Cincinnati, O., Jan. 14, 1889.

Gen. B. R. Cowen, clerk C. C., Cincinnati, O.:

Please substitute R. H. Parkinson, Esq., as solicitor for defendant in the case of James Gordon *et al. v.* Whitely, Fassler & Kelly and The Champion Machine Co., pending in your U. S. court, S. D. of Ohio.

Yours truly, S. A. BOWMAN.

34 And afterwards, to wit, on the 9th day of May, A. D. 1889, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal Y, p. 319.

This cause having been brought on for hearing and argued as well for complainant- as for defendant, and having been duly considered by the court, it is ordered, adjudged, and decreed that the defendant's machines complained of do not infringe complainants' patent (being patent No. 77878, granted James F. Gordon May 12, 1868, for improvements in grain-binders), that the equities are with the defendant, and that the bill of complaint be dismissed at complainants' costs; and thereupon complainants prayed an appeal to the Supreme Court of the United States, which appeal is granted and bond fixed at $1,000.

And afterwards, to wit, on the 6th day of July, A. D. 1889, the following petition was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Petition of Appeal.

Supreme Court of the United States.

JOHN H. GORDON, MARY A. GORDON, as Executrix of James F. Gordon, Deceased; Eliza W. Osborne, Frederick Harris, and Thomas M. Osborne, as Executor- of David M. Osborne, Deceased, Appellants,

vs.

THE CHAMPION MACHINE CO., Appellee.

35 To the honorable the Supreme Court of the United States:

The appeal of John H. Gordon, Mary A. Gordon, as executrix of James F. Gordon, deceased; Eliza W. Osborne, Frederick Harris, and Thomas M. Osborne, as executors of David M. Osborne, deceased, the above-named complainants and appellants, respectfully showeth—

That on or about the 7th day of November, 1884, John H. Gordon, James F. Gordon, now deceased, and David M. Osborne, now deceased, filed their bill in the circuit court of the United States for the southern district of Ohio against the above-named defendant; that said cause was duly revived and entitled as above by order of the court on the 23rd day of December, 1886, said bill alleging that

the defendent did infringe certain letters patent for improvements in grain-binders which were lawfully owned by the said complainants, the said bill showing the issue of said letters patent and the exclusive right and title of the said complainants in and to the same and charging the defendant with infringement thereof by unlawfully and wrongfully making, using, and selling grain-binders containing and embodying the said invention and letters patent of the complainants; the said bill further praying that the defendant be restrained and enjoined from such alleged infringements, and from using and selling such machines, and be compelled to account for and pay the complainants the gains and profits received by it, the defendant, from such alleged infringements, the damages which the complainants sustained; and the said defendant made and filed answer thereto, and the complainants duly filed their replication to said answer, and both parties took proof in said cause, and
36 the said cause was brought on for final hearing before the court in the term of the first Tuesday of April, 1886, upon the pleadings and proofs therein; whereupon the said court on such hearing decided that the defendant's machines complained of did not infringe complainants' patent, being patent #77878, granted James F. Gordon May 12, 1868, for improvements in grain-binders; that the equities were with the defendant, and that the bill of complaint be dismissed at complainants' costs; and a final decree was made and pronounced in the cause on the 9th day of May, 1889, wherein it was in substance adjudged and decreed that the complainants' bill be dismissed, and that the complainants, these appellants, pay the costs.

Therefore these appellants appeal from the said final decree of the said circuit court and respectfully pray that the decree of the said circuit court and the bill, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court may proceed to hear the said cause anew, and that the said decree dismissing complainants' bill with costs may be reversed and a decree made as prayed for in said bill, with such other decree as to the said Supreme Court shall seem just.

Dated Albany, N. Y., June 29th, 1889.

ESEK COWEN,
Of Counsel for Complainants, Appellants.

The foregoing appeal is allowed June —, 1889.

GEO. R. SAGE,
District Judge of the U. S., Southern District of Ohio, Sitting and Holding Circuit Court.

37 And afterwards, to wit, on the 6th day of July, A. D. 1889, the following appeal bond was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that I, Alfred M. Allen, of Glendale, Ohio, am held and firmly bound unto The Champion Machine Co. of Springfield, Ohio, in the sum of one thousand dollars, to be paid to the said Champion Machine Co. or its successors and assigns; for which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, by these presents.

Sealed with my seal and dated the fifth July, 1889.

Whereas, at a circuit court of the United States within and for the southern district of Ohio, in a suit in equity pending in said court between John H. Gordon, Mary A. Gordon, as executrix of James F. Gordon, deceased; Eliza W. Osborne, Frederick Harris, and Thomas M. Osborne, as executors of David M. Osborne, deceased, complainants, and The Champion Machine Company, defendants, a decree was rendered against the complainants, and the said complainants having obtained an appeal to remove the said case to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said The Champion Machine Co., citing and admonishing them to be and appear at the October term, 1889, of the Supreme Court of the United States, to be held at Washington:

38 Now, therefore, the condition of the above obligation is such that if the said John H. Gordon, Mary A. Gordon, executrix of James F. Gordon, deceased; Eliza W. Osborne, Frederick Harris, and Thomas M. Osborne, as executors of David M. Osborne, deceased, shall prosecute their said appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

ALFRED M. ALLEN. [SEAL.]

In the presence of—
ROB'T C. GEORGI.
GEO. C. WRIGHT.

The above security is approved.

GEO. R. SAGE,
District Judge of the United States, Southern District of Ohio, Sitting and Holding Circuit Court.

SOUTHERN DISTRICT OF OHIO, *ss:*

I, Alfred M. Allen, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities I am worth ten thousand dollars in real estate in my own name situate in the county of ——, in said district.

ALFRED M. ALLEN.

39 Sworn to before me the 6th day of July, 1889.

ROB'T C. GEORGI,
Deputy Cl'k U. S. Circuit Court, S. D. O. [SEAL.]

And afterwards, to wit, on the 12th day of July, A. D. 1889, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal Y, p. 384.

Now come the appellants and present herewith the appeal bond of Benedict Frenkel and pray that the same may be substituted as the appeal bond for the bond hereinbefore filed, to wit, on July 6th, 1889, which is accordingly done.

And afterwards, to wit, on the 12th day of July, A. D. 1889, the following appeal bond was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that I, Benedict Frenkel, of Cincinnati, Ohio, am held and firmly bound unto The Champion Machine Company, of Springfield, Ohio, in the sum of one thousand dollars, to be paid to the said The Champion Machine Co. or its successors & assigns; for which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, by these presents.

Sealed with my seal and dated the 12th day of July, 1889.

Whereas, at a circuit court of the United States within and for the southern district of Ohio, in a suit in equity pending in said court between John H. Gordon, Mary A. Gordon, as executrix of James F. Gordon, deceased; Eliza W. Osborne, Frederick Harris, and Thomas M. Osborne, as executors of David M. Osborne, deceased, complainants, and The Champion Machine Co., defendants, a decree was rendered against the complainants, and the said complainants having obtained an appeal to remove the said case to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said The Champion Machine Co., citing and admonishing them to be and appear at the October term, 1889, of the Supreme Court of the United States, to be held at Washington:

Now, therefore, the condition of the above obligation is such that if the said John H. Gordon, Mary A. Gordon, executrix of James F. Gordon, deceased; Eliza W. Osborne, Frederick Harris, and Thomas M. Osborne, as executr*ix* of David M. Osborne deceased, shall prosecute their said appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

BENEDICT FRENKEL.

In presence of—
J. B. FRENKEL.
ROB'T C. GEORGI.

41 On the 12th day of July, 1889, before me personally came Benedict Frenkel, to me known and known to me to be the individual described in and who executed the foregoing bond, and he acknowledged that he executed the same.

[SEAL.] ROBT C. GEORGI,
Deputy Clk U. S. Cir. Ct, S. D. O.

SOUTHERN DISTRICT OF OHIO, *ss:*

I, Benedict Frenkel, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities I am worth ten thousand dollars in real estate in my own name situate in the county of Hamilton, in said district.

BENEDICT FRENKEL.

Sworn to before me the 12th day of July, 1889.

ROBT C. GEORGI, [SEAL.]
Deputy Clerk U. S. Circuit Court, S. D. O.

42 And afterwards, to wit, on the 19th day of September, A. D. 1889, the following stipulation was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Stipulation.

United States Circuit Court, Southern District of Ohio.

JOHN H. GORDON & Others
vs.
BENJAMIN H. WARDER and Others.

SAME
vs.
WHITELY, FASSLER & KELLY.

SAME
vs.
THE CHAMPION MACHINE COMPANY.

SAME
vs.
ABEL HOOVER & Another.

The evidence taken in either of the above-entitled causes having been treated upon the hearing in the circuit court as if taken in all of them, so far as pertinent, and it being the desire of the respective counsel that the same should be so used upon appeal, and that the same depositions and exhibits should not be duplicated in the
43 transcripts carried to the Supreme Court, it is hereby stipulated that the clerk of the circuit court shall, upon an appeal to the Supreme Court of the United States being taken in each of the above-entitled causes, certify to that court the pleadings in each

case, together with such evidence as has been filed therein, and that the evidence taken and filed in the suit wherein Benjamin Warder *et al.* are defendants and the suit wherein Abel Hoover *et al.* are defendants shall, so far as pertinent, be referred to and used upon the hearing in the Supreme Court with the same effect as if taken and filed in all of said causes.

PARKINSON & PARKINSON,
Of Counsel for Defendants.
ARTHUR STEM,
Solicitor for Complainants.

44 THE UNITED STATES OF AMERICA, }
Southern District of Ohio, Western Division, } *ss:*

I, Benjamin R. Cowen, clerk of the circuit court of the United States within and for the district and division aforesaid, do hereby certify that the foregoing is a true and complete transcript of the proceedings had by and before the court aforesaid in the above-entitled cause as the same appears of record and on file in the clerk's office of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at Cincinnati, O., this 14th day of October, A. D. 1889.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

B. R. COWEN,
Clerk U. S. Circuit Court, S. D. O.,
By R. C. GEORGI, *Deputy.*

45 By the Hon. George R. Sage, district judge of the United States, S. D. O., sitting & holding circuit court of the United States for the southern district of Ohio, to The Champion Machine Company:

Whereas John H. Gordon, Mary A. Gordon, as executrix of James F. Gordon, deceased; Eliza W. Osborne, Frederick Harris, and Thomas M. Osborne, as executors of David M. Osborne, deceased, have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of Ohio, made in favor of you, the said The Champion Machine Company, and have filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October, 1889, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Cincinnati, in the southern district of Ohio, in the sixth circuit, on the sixth day of July, in the year of our Lord one thousand eight hundred and eighty-nine.

GEO. R. SAGE,
District Judge of the United States, S. D. O., Sitting and Holding Circuit Court, There Being no Associate Justice or Circuit Judge in the District.